FOR MYSORE STATE

(1950) Department

SERIES.

G.O. NO. 65

Dated 9/1/50

[Despatch Abstract.]

ooks And Publications — Land Acquisitor
anual - Amendments issued —
Amendments to B.S.O 90(16) - Appro

Revenue Department.

Memo.No.34017 C/49-2, dated 25-7-49.

Land Acquisition - Issue of Instructions to Land Acquisition officers - Legality.

**

The existing provisions in B.S.O. No.90-16 and in para 5, Chapter II in Part III of the Land Acquisition Manual, proceed on the assumption that it is proper to issue executive instructions to the Collector under the Land Acquisition Act regarding the manner in which lands acquired under the Act should be valued. The question whether it is proper to issue such instructions was examined recently.

In A.I.R. (1936) Peshawar 217, the High Court took objection to a circular issued by the Revenue Commissioner to Land Acquisition Officers requiring them to make their final awards according to the instructions received from the Deputy Commissioner. The High Court characterised the circular as "repugnant to the Act itself and illegal" and observed "that if the Deputy Commissioner issued any instruction intended to vary the award, his action was ultra vires and his instructions were irrelevant". In a recent case reported in I.L.R.(1946) Allahabad 195, the privy Council held that in assessing compensation under section 11 of the land Acquisition Act, the Land Acquisition Officer performs a statutory duty, and that he must exercise his own judgment, which cannot be controlled even by an agreement between the parties interested as to the correct basis of valuation. Attention is also invited to the following observations which occur in I.L.R. 14 Rangoon 209 at p.213.

"..... neither the Government nor any other body or person is entitled to issue or justified

in issuing instructions to the Collector as to the manner in which or the figure at which the compensation ought to be awarded. Under section 11, the award has to be of such a sum by way of compensation as in the opinion of the Collector and of no other person, is a fair and proper estimate of the compensation that should be allowed for the land."

2. Although the Collector, when exercising his functions under part II of the Land Acquisition Act, acts in an administrative capacity and not as a judicial officer Government are advised that in as much as he performs a statutory duty, he should be free to exercise his own judgment and that any instructions or directions to him regarding the manner in which his judgment should be exercised will be improper. The executive instructions in the Board's Standing Orders and the Land Acquisition Manual referred to above should therefore be suitbly modified The Board of Revenueis requested to suggest the necessary amendments to the provisions in the B.S.O. and in the Land Acquisition Manual.

To
the Board of
Revenue.

REVENUE DEPARTMENT.

LAND ACQUISITION - Instructions to Land Acquisition Officers Issue of - portions relating to in the Land Acquisition Manua and B.S.O.=- Amendments submitted.

B.P.Mi...

MADRAS.= 1St December 1949.

From
Sri C.V.Narasimham,I.C.S. Secretary,Board of Revenue.
Sri S.Ranganathan,I.C.S. Commissioner of Land Revenue.
Sri V.N.Kudva,I.C.S. Commissioner of Commercial Taxes.

From the Government, Revenue Department, Memo No.34017-C/49-2, dated 25.7.1949.

RESOLUTION

With reference to the Government memo cited above, the Board has examined paragraph 16 of B.S.O. 90 and paragraph 5 of C&.II Part III of the Land Acquisition Manual with a view to omit therefrom any expression or word which tends to restrict the powers of the Collector (Land Acquisition Officer) in the matter of fixing the award. The two paragraphs are dalt with below seriatim:

B.S.O.90(16)

The heading of the paragraph reads "Safeguards to be adopted against excessive awards". As the words "safeguards and "Excessive " imply an element of check, the Board considerss it desirable to omit them and to recast the heading as "Procedure to be adopted in cases where the award exceeds the estimated cost."

The first three sentennes of this paragraph clearly refer to the disability of the Government in law to intefere with excessive awards and the need to make up by executive control. The Board therefore submits that they may be omitted.

The rest of the paragraph deals with cases in which reports should be sent to the District Collector by the Land Acquisition Officer and the action to be taken by the District Collector on such reports. The purpose of these reports is:

(1) to enable the District Collector to place before the Land Acquisition Officer any information that may be helpful in the matter of the valuation of the land; and

(2) to decide on the withdrawal from acquisition in cases where the estimated cost is likely to be exceeded in a large measure.

As the paragraph stands at present, the Board finds, that while a sentence or two concede the absolute powers of the Land Acquisition Officer in determining the amount of compensation some others are suggestive of control of his discretion. The Board considers that a mere removal of offending phrases or words will not be satisfactory and that it is better to recast the whole paragraph leaving out the restrictions placed on the Land Acquisition Officer. It has accordingly edited the paragraph as shown in the annexure.

For the same reasons, para 5, Ch.II Part III of the Land Acquisition Manual also requires to edited omitting portions which tend to fetter the discretion of the Land Acquisition Officer. The amended version is shown in the annexure.

The Board requests that the paragraphs as edited by it may be substituted for the existing ones both in the B.S.Os. and in the Land Acquisition Manual.

In this connection, the Board wishes to point out that it has persistently felt the need for the Government to have power to apply to the courts for revision of the awards passed by Collectors, when they are excessive. It invites the attention of the Government to para 80 of the report of the Road Lands Enquiry Committee and its remarks thereon submitted with its Resolution Mis.1545 (Fonfdl.) dated 6-12-46. As the very safeguard that obtained hitherto by the issue of executi instructions is proposed to be withdrawn, the Board submits that the need for safeguarding against excessive awards by statute has become imperative. It therefore requests that the Government may be pleased to initiatethe necessary legislation.

For Secretary

To The Secretary to Government, Revenue Department, Fort St George, Madras (with an annexure)

Proposed.

B.S.O. No 90 (U.B.)

Procedure to be adopted in cases where the award exceeds the estimated cost.

"All awards are to be reported to the District Collector with particulars as to the area, soil, rate per acre and total amount in each case with adequate explanation whenever the award exceeds the preliminary valuation. All cases in which the Collector proposes to award more than 10 per cent in excess of the original estimate, or more than Rs.10,000 or in which he considers that the evidence is confliction or of such a nature that the Civil Court may possibly award a sum exceeding the estimate by 10% on appeal, should also be reported to the District Collector. In cases of acquisition for a large project, the Collector finds that the awards are likely to exceed the aggregate estimate for the district by 20% or more, the announcement of further awards should be suspended and a special report should be submitted to the Board through the District Collector. On receipt of these reports, the District Collector may furnish to the Collector (L.A.O.) any information which may be helpful to the L.A.O to determine the correct value of the land. It is not however competent for the District Collector to direct the Collector to award any particular amount as compensation. When the Collector, after considering all the information placed at his disposal has finally decided the award to be made, the only alternatives open to the Government are either to withdraw from acquisition proceedings or allow them to proceed on the basis of the Collector's award.

The District Collector should call for the explanations from the officers responsible for the original valuation whenever their estimate is found to be materially lower than the value finally awarded. If the land is to be paid

Existing.
(Para 16-B.S.O.-90)

Safeguards to be adopted against excessive awards:- It is to be noted that, while the civil court is competent to increase the amount of the Collector's award, it cannot award less than that amount. Also whereas section 18 of the Act gives the owner of land the right of appealing against the award of a Collector, Government are denied such a right in view of the executive control which they can bring to bear on the acts of a Collector. It is therefore most important that such control should be efficiently exercised. When in the course of the acquisition of land for a large project it is found that awards are likely to exceed the aggregate estimate for a district by 20 per cent or more, the announcement of further awards should be suspended and a special report should be submitted to the Board through the District Collector. Moreover, all awards should be reported to the District Collector with particulars as to the area, soil, rate per acre and total amount in each case and withadequate explanation whenever the award exceeds the preliminary valuation. If the officer making the award is not the Collector of the district, she should, before making the award refer to the Collector any case in which he proposes to award more than 10 per cent in excess of the original estimate, or more than Rupees 10,000 or in which he considers that the evidence is conflicting or of such a nature that a civil court may possibly award a sum exceeding the estimate by 10 per cent on appeal. The District Collector may require all cases to be referred to him before the award is pronounced; and the Collector in making his finalaward should be guided by the instructions received from the District Collector. Such instructions should be confined to any information which the District Collector may have as to the proper valuation of the land or which the Collector should take into account in framing his award. But it is not competent for the District Collector to direct the Collector to award any particular amount as compensation. When the Collector after considering all the information placed at his disposal has finally decided the amount of the award to be made, the only alternatives open to Government are either to withdraw from acquisition proceedings or to allow them

for by another department of Government, the District Collector should enquire of that department whether the acquisition should, in the circumstances, be completed."

PROPOSED.

-Para 5. Chapter II Part III of L.A. Manual

"In assessing compensation under section II of the Act, the Col ector performs a statutory duty. The award should therefore be based on his own judgment with reference to the data available. He must collect materials on which to base his award, scrutinise the data supplies by the Parties and test them if possible by independent evidence. He must award such a sum as, in his opinion is a fair and proper compensation that should be allowed for the land."

In making the award, the collector should be independent of any local body or company for whom the acquisition is made. He is not a mere purchasing agent lent to the acquiring body, nor is a mediateor between the owner and the acquiring body simply to register their private compromise in the form of an award. He has a responsibility of his own and is bound to observe the formalities under the Act and to fix the compensation in accordance with the provisions of the Act."

to proceed on the basis of the Collector's award. The Distirct Collector should call for explanations from the officers responsible for the original valuation whenever their estimate is found to be materially lower than the value finally awarded. If the land is to be paid for by another department of Government, the District Collector should enquire of that Department, whether the acquisition should in the circumstances be completed.

EXISTING.

Para 5. Chapter II, Part III of L.A. Manual.

"As the Collector in the Agent of the Government he is bound in passing his award to take into consideration the departmental instructions of the Government. He should be independent of any local body or company for whom the acquisition is made. He is not a mediator between the owner and the acquiring body simply to register their private compromise in the form of an award. The Collector is not a mere purchasing agent lent to the acquiring body. He has a responsibility of his own and is bound to observe the formalities of the Act and the procedure laid down in the the executive instructions of the Government. It is his duty to point out to the acquiring body what the rationable the procedure under the Land Acquisition Act and the departmental instructions are. It is the Collector's duty to see that the owner gets a fair price for the land and that the Government do not pay more than a reasonable compensation. He has statutory - obligations to discharge and his award under section II must be based on his own judgment, with reference to the data available. He must collect the materials on which to base his award, scrutinize the data supplies by the parties and test them if possible by independent evidence He must not be afraid of parties asking for

section 18 of the Act against award as it is no part of his duty to avoid a - reference to the court."

ABSTRACT.

BOOKS AND PUBLICATIONS - Land Acquisition Manual - Amendments issued - Ammendments to B.S.O. 90 (16) - Approved.

REVENUE DEPARTMENT.

G.O.Ms.No.65. Dated 9.1.50.
Read the following:-

Government Memo.No.34017 C/49-2,dated 25.7.49.
From the Board of Revenue B.P.Misc.1366,
dated 1-12-49.

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ORDER:

The draft ammendments to the Land Acquisition Manual specified in the appendix to this order are approved and issued. The Superintendent,Government Press is requested to print the amendments as the 100 the list of corrections the Land Acquisition Manual and distribute copies thereof in accordance with the distribution list contained in Appendix II to G.O.Ms.No.2475 Revenue,dated 4.11.45 after recovering the cost whereever necessary.

2. The draft amendments to B.S.O. 90 (16) submitted by the Board of Revenue in its reference cited and also approved.

3. The Board of Revenue is informed that the question of undertaking legislation enabling the Government to apply to the 'Court' for revision of the awards passed by the Collector when they are excessive, is being examined separately.

(By Order of His Excellency the Governor)

K.M.UNNITHAN.
Secretary to Government.

To
The Board of Revenue through Superintendent Government Press (paras 1 and 2 only)
(spare copies-3)

/True Copy/

Superintendent.

nr.26/5

100th List of Corrections to the Land Acquisition Manual.

I Pages 46-47,B.S.O.,90 paragraph 16 for the existing paragraph substitute. the following:-

H.E. A on pp. 5-6.c.f.

II Page 78,Part III Chapter II, para 5 -

For the existing paragraph substitute the followigg:-

H.E. B on p. 6.f.f.

Extract from file Rev.C.No.30395/49.

The draft notification under sec.4(1) of the L.A. Act was published some time in September 1948. It is therefore the market value of the lands in September 1948. that has to be taken intoaccount in arriving at the compensation. The Collector valued the lands as building sites. The point arises whether the lands could be valued as building sites in view of the provisions of the Madras Construction of Buildings on Wet Lands (Prohibition)Bill,1948 -- especially clause 1 (3) of the Bill. Legal will no doubt advise on thispoint. (The Select Committee to which the Bill was referred has not yet submitted its report).

V.K.R.
5.3.49

G.V. 5.3.49.

LEGAL DEPARTMENT.

Clause 3(1) of the Madras construction of Bldgs. on Wet Lands (Prohibition) Bill prohibits a person from constructing or causing to be constructed any building on any wet land without obtaining the previous permission in writing of the Dist.Collr. In the statement of Objects and Reasons, it is stated that the Collr, will give permission only in exceptional cases where no dry lands are available for building purposes. Consequently, if the Govt. do not grant permission the owners of the lands or the prospective purchasers will not ordinarily be able to use them as bldg. sites and the lands should normally be continued to be used as agricultural lands. However, in determining the compensation payable under sec.23 of the L.A. Act, the fact that only with the Govt.'s permission can buildings be constructed on the lands in question, cannot be utilised for rejecting altogether the claim for compensation with reference to the [illegible]

to which the lands might be put for building purposes. The Advocate-General,(Sri A.Krishnaswamy Iyer) in his opinion No.7 d/19.2.1941,has , with reference to the decision of the Privy Council in I.L.R. 1939,Madras 532, observed as follows:-

"... It does not follow that the fact that the sel would not have been able to utilise the spring as a source water supply because it would need statutory power before i can be so put and which would not be available to a private individual is not a consideration that had to be taken into account before assessing the amount of compensation. Because in the concluding portion of the judgment their Lordships say "that the claimant would have to obtain the consent of the Harbour Authority to lay the necessar pipes in the Harbour area itself and the possibility of suc consent being refused would have to be taken into consi-deration in estimating the value to the appellant of the special adaptability of his land, though the risk of suc consent being refused was not a serious one, assuming tha there was no other source from which the water could be profitably supplied by the Harbour Authority itself. In the case on hand the fact that the only person that could put it to the use as a source of water supply is the Municipality itslef is a factor that that to be taken into account, but I am clear that it could not be utilised for rejecting compensation altogether with reference to the particular use."

The Privy Council in the decision referred to above after examination of the previous case-law,came to the following conclusion:---

"For these reasons their Lordships have come to the conclusion that even where the only possible pur-chaser of the lands potentially is the authority that has obtained the compulsory powers, the arbitrator in com-pensation must ascertain to the best of his ability the

price that would be paid by a willing purchaser to a willing vendor of the land with its potentiality in the same way that he would ascertain it in a case where there are several possible purchasers and that he is not more confined to awarding the land's "poramboke" value in the former case than he is in the latter."

It seems therefore that though the fact that buildings could be constructed on the wet lands in question only with the Govt.'s permission has to be taken into account, it could not be utilised for rejecting the claim for compensation altogether with reference to the particular use.

2. It may here by noted that it will not be proper for the Govt. to issue instructions to the Land Acquisition Officer. The appropriate procedure is to instruct the Govt. Pldader or some other suitable officer to appear before the Land Acquisition Officer and argue the Govt.'s case. Attention is in this connection invited to the following observations in I.LR.14 Rangoon 209 on p.213.

"..... neither the Govt. nor any other body or person is entitled to issue or justified in issuing instmuctions to the Collr. as to the manner in which or the figure at which the compensation ought to be awarded. Under section 11 the award has to be of such a sum by way of compensation as, in the opinion of the Collr. and of no other person is a fair and proper estimate of the compensation that should be allowed for the land."

This Department would, therefore, suggest that no instructions need be issued to the Land Acquisition Officer in this case with reference to the valuation but the appropriate officer may be requested to represent Govt.'s case before him.

To D.S.

(This Dept. notes on pp.60-62 above.)

Rev. & Legal notes from p.63 above may be perused.

Fin may also see for remarks.

9-3-49

Fin.(Accts.)Dept.

(Previous Fin.Note on p.58 above.)

The question now under consideration is about the payment of compensation for the lands acquired for the location of the Central Research Institute for Leather Technology at Madras. The site has to provided by this Govt. free of cost to the Govt. of India. Dev. have questioned the valuation suggested by the Collr. in his letter on p.335 c.f. pleases see their note on pp.61-62 The Collr. has valued the lands not as agricultural land but as building site. The point at issue is summarised in the note of D.S. I... n p.65 above. The legal position has been explained in the Legal Departments note on pp.65-67 above.Fin. may agree to action being take as suggested by Legal at 'A' on p.67 above.

11.3.49

11.3.49.

Dev.(P&B)IV) Dept.

A.S.

On the offer of this Govt. to provide necessary land and facilities free of cost, the Govt. of India decided to locate the Central Research Institute for Leather Technology at Madras. In pursuance of this, a plot of aland measuring about 66 acres lying to the East of the Engineering College Guindy was selected.

The Govt. of India desired that the area selected should be placed immediately at their disposal. As the plot was required by the Central Govt. to be levelled up before the commencement of the rainy season so as to start construction immediately thereafter, an estimate for Rs.64,000/- for putting up a bund accorss the middle of the Kottur Tank and for levelling up the entire plot was sanctioned. The Collr. has now submitted two valuation statements amounting to Rs.2,24,255-11-11 in regard to the private lands already acquired. This amount also includes payment of interest from date of taking possession till 25.3.49. The Collr. has reported that a valuation of Rs.9000/- per acre has been adopted for the lands having a frontage on the Guindy Road and that a lower valuation has been adopted for the lands in interior. The Collr. has valued the lands (which were till now used as agricultural land) as building sites. He has reported that the lands in question are till now used as agricultural lands but they have values as potential building sites, that the sales of lands in the locality show that there has been a sharp increase in value after 1946 and that therefore he has valued them not as agricultural lands but as building sites. He has also added that his valuation is based on sales of land in the vicinity and that a lower valuation will lead to the payment of costs in a reference to the Court by the parties. The Collr. has also satisfied himself as a result of prsonal inspection that the values fixed are not excessive from the Govt.'s point of view.

7. The point for consideration now is whether the land can be valued as building sites in view of the provisions of the Madras Construction of Buildings on Wet lands (Prohibition Bill, especially clause 3(1) of the Bill. This Dept. considered that in view of the provisions of this Bill there was no justification to treat the lands as building

sites. The remarks of Rev.Legal and Fin. in the matter will be found on pp.63-68 above. Rev. have not offered any definite remarks on this point. Legal have pointed out that in determing the compensation payable under sec.23 of the L.A. Act, the fact that only with the Govt.'s permission can buildings be constructed on the lands in question cannot be utilised for rejecting altogether the claim for compensation with reference to the use the lands might be put for building purposes. They have also quoted the opinion No.7 of the Advocate General d/19-2-41 in supp of their contention. But they however have suggested that no instruction need be issued to the L.A. Officer in this case with reference to the valuation but the appropirate officer may be requested to represent the Govt's case befor him. Fin. have agreed with the suggestion made by the Legal Dept.

3. In para 3 at p.77 of the L.A. Manual it is stated that the Collr. exercising functionss under Part II of the Act (Acquisition) is acting only in an advisory capacity and is not exercising judicial functions at all. Para 6 at p.78 of the Manual says that as the Collr. is the Agent of the Govt. he is bound in passing his awards to take into consideration the departmental instructions of the Govt. According to para 9 at pp.119-120 of the Manual also he is expected to act as the Agent of the Govt. and is not bound to base his decision on strict legal evidence. From these it may be seen that the Collr. acting under the above provisions is not a judicial officer and instruction issued by the Govt. do not appear to be improper. As a matter of fact it appears that Govt. are entitled to issue executive instructions which the Collr. is bound to carry out. The question of deputing a legal representative of the Govt. to appear before the Collr. on the day of the enquiry does not seem to arise as Govt. if they desire can issue executive instructions, instead, before fixing the award.

4. In the statement of objects and reasons published with the Bill relating to the Madras Construction of Bldgs. on Wet Lands (Prohibition)Act,1948 it has been clearly stated that the legislation will be given retrospective effect as from the date of publication of the Bill and that nobody will thereafter undertake any building operations on wet lands without obtaining the previous permission of the Collr. of the district. In the Privy Council Judgment quoted by Legal, Their Lordships have observed that in awarding compensation, the arbitrator must ascertain the price that would be paid by a willing puchaser to a willing vendor of the Land with its potentiality in the same way that he would ascertain it in a case where there are several possible purchasers. So long as the Bill has not been withdrawn, no purcha will come forward to buy the lands in question on the basis of the value of adjacent building sites. In the judgment of the Privy Council quote by the Advocate-General and referred to by Legal, the risk of consent to utilise the spring in the concerned land being refused is being treated as not a serious one. In the case under consideration in this file however it has to be understood that in the face of serious food shortage the chance of the owners gettingthe consent of the authorities to put up buildings on the lands is next to impossibility and no private purchaser will ever purchase them at the rate at which adjacent house sites are being sold. The wet lands acquired will have only to continue to be cultivated. This is an all important factor which has to be taken into account in fixing the award. Viewed from these aspects the valuation made by the Collr. are excessive and there seems to be no objection to issue

5. Rev and Legal may again see for remarks with reference to 'A' and 'B' at p.70.antd and 'C' above.

18.3.49

23.3.49

Revenue department.

To
U.S.

1.'A' on p.70 above.

1.B.S.O. 90-12 also lends support to the view that the Collr. is not a judicial officer but acts as the agent of the Govt. This standing order reads as follows:-

It has been held that the Collr. is in no sense of the term a judicial oficer, and that the proceeding before him is not a judicial proceeding. He acts as the agent of the Govt. If the owner of the land desires a judicial decision as to its value or rival claimants as to their title, they can obtain it by requiring the matter to the referred by the Collr. to the Court under sec.18 The Collr. can also of his own motion refer disputes of title to the civil court under section 30 and should do so in all difficult cases.

Note (4) under B.S.O. 90-16 also says that--

"When a case has been referred to the civil court the Collr. should arrange for the defence of his award as if it were a suit against Govt."

There seems to be therefore no point in deputing a representative of the Govt. to appear before the Collr. during the enquiry into the claims for compensation.

Note (1) under B.S.O.90-16 however contemplates the departmental officer appearing before the Land

Acquisition Officer where necessary, for producing evidence and making any representation. The note reads as follows---

"The collr. should give sufficient notice of the date of enquiry to be held under sec.11 of Act I of 1894 to the departmental officer or the officer of the local body or company concerned, so that the may if so advised appear in person or byagent watch the proceedings and produce evidence as to the value of the land and should take into consideration any representation which such officer may make, whether it is made orally or by letter."

2. B.S.O. 90-16 reads as follows:--

"It is to be noted that while the civil court is competent to increase the amount of the Collr's award, it cannot award less than that amount. Also, whereas section 18 of the Act gives the owner of the land the right of appealing against the award of the Collr. the Govt. are denied such a right in view of the executive control which they can bring to bear on the acts of a Collr. It is therefore most important that such control should be efficiently discharged."

The standing Order further provides that the Dist. Collr. may require all cases to be referred to him before the award is pronounced and that the Collr. in making his final award should be guided by the instructions received from the Dist.Collr. Such instructions should however be confined to any information which the Dist. Collr. may have as to the proper valuation of the land of which the Collr. should take into account in framing his award. But it is not competent for the Dist. Collr. to direct the Collr. to award any particular amount as Compensation.

It is therefore clear that it is open to the Govt. to issue any instruction to the Collrs. as to how wet lands should be valued in the face of the Construction of Bldgs. on wet Lands (Prohibition)Bill.

3. B.on.p 70 above. The executive instructions extracted below would give an idea as to how far the Collr. can discredit the possibility of wet lands being used as building sites in the face of the Construction of Bldgs. on Wet Lands (Prohibition)Bill:---

"The attitude of civil courts invaribly is that Acts of this character are to be liberally expounde in the favour of the public and strictly expounded as against the Govt. It is necessary that Land Acquisition Officers should bear these facts in mind in every stage of their proceedings."

(Para 1,Chapter II on p.76 of the Land Acquisiti Manual)

XX Xx XX

If there is a present demand for agricultural land for building purposes, its market value should be calculated not merely according to the actual use to which the lands is now put, but with reference to the most lucrative and advantageous way in which it is capabl of being used today."

(Para 1, Chapter XI on p.95 of the L.A. Manual).

The question arises how the increase accruing to the value of the land by reason of its potentialities or possibilities is to be measured. In the case in-

stanced above of land possessing the possibility of being used for building purposes the Land Acquisition Officer would probably have before him evidence of the prices paid, in the neighbourhood for land immediately required for such purposes. He would then have to dedscut from the value so ascertained such a sum as he would think proper by reason of the degree of possibility that the land might never be so required or might not be so required for a considerable time."

(Para 5,P.91 of the L.A. Manual)

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"It has been frequently laid down that while the owner is entitled to be compensated at the highest rate for which he can sell the land for the most remunerative purposes for which it can be utilised, he is not entitled to be compensated for potential values when the opportunity for making such use of the land for the purposes which might create those potential value is so remote as to be negligible."

(Para 3,Chapter XI on p.96 of L.A. Manual.)

xx x xx

"While the Special adaptability of agricultural land for building purposes is an element to be taken into consideration in fixing compensation the land cannot be valued as building sites if on account of any special circumstances of the case the use of the land as building sites would never be permitted."

(para 6,Chapter XI on p.97 of the L.A. Manual).

The following points also merit consideration. Firstly, though the Bill when it becomes law may have retrospective effect, the fact remains that it has not yet become law. Secondly, so long as the Bill provides for the construction of buildings on wet lands in ex-

ceptional cases, with the permission of the Collr, the possibility, though remote, of the lands being put to use as building sites is there. Besides, the Select Committee has made the following tenative proposals--

(1) that the Act should come into force in such areas and on such dates as the Govt. may be notificatio direct.

(2) that wet lands within the limits of mufassal muncipalities and the Corporation of Madras should be excluded from the operation of the Act.

(3) that the definition of 'buildings' should exclude 'agricultural buildings.'

Proposal (2) above will not affect the wet lands under feference they being within any municipal limits. If the first proposal is accepted, the Act may not have retrosepctively effect at all. There is also a proposal to exclude wet lands within Town planning areas from the scope of the Bill

In the circumstances, thepossibility, as viewed now, of the wet lands in question being put to use as building site cannot, it seems, be considered so remote to be deemed negligible (for the purposes of instructions extracts at A on p.73 above). Nor can it be presumed that the use of these lands would never be permitted (for purposes of instruction at B on p.73). It may be that as stated by Dev., so long as the Bill is not withdrawn no purchaser would come to buy the lands in question on the basis of the value of the adjacent building sites. That however, it seems, cannot be a fitting argument against allowing any value for the lands as potentia building site in the circumstances statedabove and especially in view of the instructions extracted at Z on p.73 above which requires a liberal interpretationof the law in favour of the public.

4. 'C' on p.71 above. As already indicated, it would ot be proper to discount altogether the possibility of he wet lands in question being used as building sites. ertain degree of possibility will have to be allowed. T.is egree would however be difficult to determine In view f the uncertain position of the effect of the Consturction f Buildings on Wet Lands (Prohibition)Bill, it might peraps be more in keeping with the spirit of the instruction t 'Z' ~~xxxxxxxxxxxxxxxxxx~~ on p.73 above to accept the preent valuation of the land or the basis of the value f the adjacent building sites.

5. The file may be passed on to Legal. Dev. may e requested to let this Dept. see the remarks of Legal.

Instructions of a general nature with special eference to the proposed Bill prohibiting the construction f buildings on wet lands, may issue to the Collr. and che proposals may be sent back to him for reconsideration in the light of those general instructions. But it would not be proper to tell the Collr. that the valuations on this particular case are excessive and should be step ed down. M.G.M.12.4.49.

I agree. And the fact that the Bill is an emergency measure in view of the food situation and that there is a likelihood of such restrictive legislation being withdrawn or modified after some years, and a llikelihood, in consequence of the potentialities of the area as building area being revived will also have to be considered.

M.V.S.
12.4.49.

Legal Department.

The executive instruction in the land acquisition Manual cannot override the express provisions of the land Acquisition Act. In A.I.R. (1936) Peshwar 217, the High

Cout took objection to a circular issued by the Rev.Commr. to Land Acquisition Officers requiring them to make their final awards according to the instructions received from the Dy Comm The High Court characterised the circular as "repugnant to the Act itself and illegal" and observed "that if the Dy. Commr. issued any instuctions intended to vary the award, his action was ultra vires and his instructions were irreleva In a recent case reported in I.L.R. (1946) Allahabad 195 , the Privy Council held that in assessing the compensation under sec.11 of the Land Acquisition Act, the Land Acquisition Officer performs a statutory duty and that he must exercise his own judgment, which cannot be controlled even by an agreement between the parties interested, as to the correct basis of valuation. It was held in 1945 M.W.N.775 that the Land Acquisition Officer acting under Part III of the Act, acts as a judicial officer and not merely as an agent or mouthpiece of the Govt.

In connection with the acquisition of lands for the Machkund Hydro electric scheme, the previous Secy.Mr. (now the Hon'ble Mr.Justice)P.V.Balakrishna Iyer expressed the view that the Land Acquisition Officer should be left to decide initially all the rights that are to be included for assessment of compensation and that it is irregular to issue any instructions on the matter. He also observ that Govt. Pleader or some suitable officer can argue the Govt's case before the Land Acquisition Officer.

Having regard to the above, it will be imporper to send back the case to the Collr. for revising the valuations or to give any instructions to him for that purpose.

10-5-49.

I agree with the view expressed in the above note. The question which has given rise to the noting in this file, whether the Collr.'s valuation of the site should not be varied with reference to the provisions contained in the

Bill prohibiting the erection of buildings on wet lands, ceases to have any importance, in view of the decisio... ... the Government ot withdraw the Bill

It seems to me however that the executive instructio in the Land Acquisition Manual referred to in this file, should be suitably altered in the light of the decisions referred to in the note of the Asst. Secretary . I sugge that the attention of the Board may be drawn to thesubje and its remarks thereon invited.

10-5-49.

Extract from file Rev.C.No.30395 C/49.

Rev.Department.

To A.S.

In view of the Legal Departments opinion at 'B' above nno instruction need be given to the Collr. as suggested at 'C' on p.75 above. W.r.t. the remarks of the Legal Secretary at 'A' on p.77 above a copy of the notes on pp.65-77 above will be taken for necessary action in a separate file.

After taking extracts the file may be sent to Dev.

E.S. 23.5.49

M.V.S.24.5.49.

To A.S.

Please see the extracts above.

The Legal Department have pointed out that the Executive instructions in the L.A.Manual cannot override the express provisions of the L.A. Act and that they must be suitably altered in the light o... ...ecisions referred to by that dept. an p.11 above. The decisions referred to rel te to the functions of a Collr. udder Parts II and III of the L.A.Act. As regards the functions

of the Collr. under part III of the Act these decisions are not in conflict with the Executive instruction in the L.A. Manual please see X on p.11 above and para 3 of chapter II, Part III of the L.A. Manual. Hence no reference need be made regarding this in the Memo to be issued to the Board of Revenue.

2. Subject to orders a draft memo is submitted for approval. Legal May see.

Legal Department.

Seen in Legal. The alterations indicated in red ink on the draft may be made. Rev.U.O.34017C/49 12.7.49.

Rev.Department.

To
A.S.

Please see the Legal note above.

2. The draft as revised by Legal may issue. Legal U.O.No.8904/49-1 d/18.7.49.

Issued as Memorandum 34017C/49-2 dated 25-7-49 from the Board of Rev.B.P.Mis.1366 dated 1-12-49.

To
A.S.

Please see the B.P.Mis. and the enclosures to it on pp 3-7 c.f.

The draft amendments to B.S.O. 90 (16) and to the instruction in para 5 chapter II Part III of the L.A. Manual proposed by the Board of Rev. in its ref. on p.3 c.f. are in order and may be approved.

3. With reference to X on p.4 c.f. it is submitted the Govternment of India have forwarded to his Govt. a draft Bill prepared w.r.t the various recommendations of the Road Lands enquiring Committee which contains also a provision enabling the Go

on whose behalf, acquisition is made, to apply to the Court for revision of the awards passed by Collrs. when they are excessive. The question of undertaking legislation in this regard is being examined separately. Hence no action need be taken in this file w.r.t. X on p.4 c.f. The Board may be informed accordingly.

4. Subject to orders a draft order is submitted for approval.

5. Legal and E. & P.H. may see for acceptance.

Rev U.o.340170/49-4
19.12.49.

Legal Department.

The amendments proposed by the Board and the draft order are accepted in Legal.

Legal
U.O.17079
27.12.49.

E. & P.H.Department.

The draft order below may be accepted and may be returned to Revenue.

E.&.P.H.
U.O.101698/1T
4-1-50.

To

A.S.

Please see the notes of Legal and E. & P.H. on pp.15-16 above.

The draft order may now issue.

(Issued as G.O.Ms. 65 dated 9-1-50.

Compared by
27/5

True Extracts